

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Modesto, California

September 14, 2004 at 9:30 A.M.

1. 04-92325-A-7 CYNTHIA ANN WEBB HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTOR TO PAY
FILING FEE INSTALLMENT
(\$52.00 DUE AUGUST 16, 2004)
8/19/04 [17]

Tentative Ruling: None.

2. 04-92131-A-7 JUSTIN & CARY HORNER HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTORS TO PAY
FILING FEE INSTALLMENT
(\$41.00 DUE AUGUST 3, 2004)
8/19/04 [16]

Tentative Ruling: None.

3. 04-91333-A-7 LOUIS & CHERYL RUBIO HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTORS TO PAY
FILING FEE INSTALLMENT
(\$53.00 DUE AUGUST 6, 2004)
8/12/04 [18]

Disposition Without Oral Argument: This matter is continued by the court
to September 28, 2004 at 9:30 a.m.

The court will issue a minute order.

4. 04-92937-A-7 CRISELIO PEREZ

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL OF
CASE OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE A MASTER
ADDRESS LIST AND WITHOUT
PAYMENT OF AMENDMENT FEE OF
\$26.00
8/5/04 [6]

Tentative Ruling: None.

5. 04-92937-A-7 CRISELIO PEREZ

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE SUMMARY OF
SCHEDULES, SCHEDULES A, E,
AND G-J; DEC. OF SCHEDULES,
STMT. OF FINANCIAL AFFAIRS
8/19/04 [13]

Tentative Ruling: None.

6. 04-92739-A-7 JEFFREY DEAN ROGERS

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTOR TO PAY
FILING FEE INSTALLMENT
(\$52.00 DUE AUGUST 18, 2004)
[15]

Tentative Ruling: None.

7. 04-92456-A-7 HUNG PHAM

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO ATTEND THE
SECTION 341 MEETING ON
AUGUST 5 2004
8/11/04 [7]

Disposition Without Oral Argument: The order to show cause is discharged.
The debtor attended the continued meeting of creditors on August 19,
2004, and the meeting concluded. No monetary sanctions are imposed.

The court will issue a minute order.

8. 04-90873-A-7 WILLIAM E. MONTGOMERY II
04-9058
DAN DEWALD VS.

WILLIAM E. MONTGOMERY II
LINDA MONTGOMERY

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL OF
DEFENDANT LINDA MONTGOMERY
7/28/04 [24]

Disposition Without Oral Argument: Oral argument will not benefit the court in rendering a decision on this matter. With the consent of the plaintiff, Linda Montgomery is dismissed as a defendant in adversary proceeding 04-9058. The court has no subject matter jurisdiction over the claims against her and no jurisdiction over her person.

The court will issue a minute order.

9. 04-91879-A-7 ANDRES & CARMEN ESTRADA

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL
AND/OR IMPOSITION OF
SANCTIONS FOR FAILURE TO
TENDER FEES (\$26.00 DUE)
8/20/04 [12]

Tentative Ruling: None.

10. 04-92287-A-7 DEADRA D. WOOLBRIGHT

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTOR TO PAY
FILING FEE INSTALLMENT
(\$52.00 DUE AUGUST 12, 2004)
8/20/04 [23]

Tentative Ruling: None.

11. 04-92794-A-7 RICHARD C. TRELOAR

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL OF
CASE OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE SUMMARY OF
SCHEDULES AND SCHEDULES A-J
STATEMENT OF FINANCIAL
AFFAIRS
8/9/04 [6]

Tentative Ruling: None.

12. 03-91000-A-7 INNOVATIVE STEEL SYSTEMS, HEARING ON MOTION FOR
HAR #5 & 9 INC. ORDER MODIFYING EMPLOYMENT
ORDER OF MCCORMICK,
BARSTOW (HAR-5) AND FOR
ALLOWANCE OF FINAL FEES
AND EXPENSES (HAR-9)
8/10/04 [148]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

McCormick, Barstow, Sheppard, Wayte and Carruth ("Movant") requests a modification of its engagement order (D.C. no. HAR-5) under Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60. That motion is granted. Movant began work for the debtor-in-possession on March 11, 2003. An order authorizing employment was entered April 23, 2003. The fact that Movant did not state March 11, 2003 as the commencement date for its employment was apparently based on its understanding that it would be allowed to seek compensation for services up to thirty days prior to submission of its employment application. In the initial instance, the court will treat these facts as mistake, inadvertence, surprise or excusable neglect under Fed. R. Civ. P. 60(b)(1) or an "other reason justifying relief from the operation of the judgment" under Fed. R. Civ. P. 60(b)(6). However, the firm now knows that compensation will not be allowed for services prior to the effective date of employment. Based on the foregoing, the engagement order is modified to state the effective date of Movant's employment as March 11, 2003.

Movant also requests a modification of the compensation order entered October 7, 2003 (D.C. no. HAR-9) under Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60. That motion too is granted. The partial denial of the relief requested in that fee application was solely because of the lack of an effective date in the employment order. Having modified the date of authorization of employment of Movant, the compensation order is modified so that the application for compensation is approved for a total of \$32,104.05 in fees and costs equaling \$29,665.00 as fees, and \$2,439.05 as costs. As set forth in the original application, these fees and costs are reasonable compensation for actual, necessary and beneficial services.

Counsel for movant shall submit three orders. One which conforms to the court's ruling in this matter; one amended order for D.C. no. HAR-5; and one amended order for D.C. no. HAR-9.

13. 04-90706-A-7 LEVY & AVELINA PINEDA HEARING ON MOTION TO
MGO #2 SELL ESTATE'S EQUITY IN
RESIDENCE TO DEBTORS
8/13/04 [24]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The estate owns real property located at 2244 Atchenson Street, Stockton California ("the Property"). The chapter 7 trustee seek to sell the estate's interest in the Property to the debtors for \$10,500. The sale is on an "as-is" basis. The debtors have paid \$8,000 of the price and will pay the remainder in twelve monthly installments of \$208.33. Pursuant to 11 U.S.C. §363(b)(1), the motion is granted and the trustee is authorized to sell the estates interest in the Property to debtors for \$10,500.00, on the terms set forth in the motion.

No request for a finding of good faith under 11 U.S.C. §363(m) is made and the court makes no such finding.

The 10-day stay of Fed. R. Bankr. P. 6004(g) is waived.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

14.	04-91709-A-11 RICK J. PERRY DCJ #4	HEARING ON MOTION TO EXTEND BAR DATE FOR FILING PLAN AND DISCLOSURE STATEMENT TO SEPTEMBER 10, 2004 8/20/04 [49]
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

15.	04-92709-A-11 L.L.-G.L. ENTERPRISES, INC. FWP #2	HEARING ON MOTION TO APPROVE SALE OF SUBSTANTIALLY ALL OF ITS BUSINESS ASSETS FREE AND CLEAR OF LIENS AND INTERESTS TO APPROVE ASSUMPTION AND ASSIGNMENT OF LEASES AND EXECUTORY CONTRACTS, INCLUDING DEALERSHIP AGREEMENTS 8/17/04 [69]
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Tentative Ruling: None.

16.	96-93909-A-7 ALAN & RONDA DRUMMOND PEQ #1	HEARING ON FIRST AND FINAL APPLICATION FOR ALLOWANCE OF COMPENSATION TO ACCOUNTANT FOR TRUSTEE 8/25/04 [82]
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Tentative Ruling: This is a properly filed motion under LBR 9014-

1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

17. 96-93909-A-7 ALAN & RONDA DRUMMOND HEARING ON FIRST AND
SF #9 FINAL APPLICATION OF SPECIAL
COUNSEL BOB W. HADLEY FOR
COMPENSATION AND REIMBURSEMENT
OF COSTS
8/25/04 [86]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

18. 96-93909-A-7 ALAN JON & RONDA LEA DRUMMON HEARING ON FIRST AND FINAL
SF #10 APPLICATION OF SUNTAG &
FEUERSTEIN FOR COMPENSATION
AND REIMBURSEMENT OF COSTS
8/25/04 [89]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

19. 04-92910-A-7 BARBARA J. HOLT HEARING ON TRUSTEE'S
MDM #1 OBJECTION TO DEBTOR'S
EXEMPTIONS
8/11/04 [5]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The objection to debtor's claim of exemption in "2 pleasure horses" is sustained. The debtor exempted the animals under California Code of Civil Procedure Section 704.210 for their full amount of \$2,500. That statute provides that property which is not subject to enforcement of a money judgment is exempt in total. There is no evidence that the horses are not subject to enforcement of a money judgment. Therefore, the exemption does not apply and the trustee's objection is sustained.

The trustee shall submit an order that conforms to the court's ruling.

Tentative Ruling: The failure of any party in interest to file written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, because other parties may be interested in purchasing the property, the court will issue a tentative ruling.

The motion is granted to the extent set forth herein. The estate owns real property located at 135 East Jefferson Street, Stockton California [APN 147-154-08](the "Property"). The chapter 7 trustee seeks to sell the Property to Marcos Reyes for \$162,500.00 free and clear of "any and all liens and interests." The court can only authorize a sale free and clear of a lien or interest if the trustee establishes one or more of the bases set forth in 11 U.S.C. § 363(f) with respect to the lien or interest. Furthermore, the court cannot either statutorily or constitutionally authorize a sale free and clear of a lien or interest the holder of which did not receive sufficient notice of the sale to enable it to object. 11 U.S.C. § 363(b); In re Center Wholesale, Inc., 759 F.2d 1440, 1448-49 (9th Cir. 1985); In re Moberg Trucking, Inc., 112 B.R. 362 (9th Cir. BAP 1990).

The trustee seeks to sell free and clear of several identified claims or possible liens on the property. These include:

1. A judgment lien for spousal or child support in favor of the County of Sacramento recorded July 11, 1997. The trustee does not oppose satisfaction of this lien through escrow to the extent that it secures pre-petition support arrears. To the extent that it secures post-petition support arrears, the trustee asserts that he can sell free and clear of the lien because the sale price exceeds the total of all liens on the property and because the lienholder could be compelled under state law to accept a money satisfaction of the judgment. The court finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(3) and (f)(5). The court also finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(2). A "lack of objection (provided of course there is notice) counts as consent." Futuresource, LLC v. Reuters Limited, 312 F.3d 281, 285 (7th Cir. 2002).

2. A lis pendens recorded by Magdaleno and Gloria Medina on March 4, 2004. The lis pendens was recorded post-petition without bankruptcy court permission. The trustee alleges that the recordation is void as a violation of the automatic stay. He further alleges that as part of an approved compromise, the Medinas have consented to the sale of the Property. The court finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(2) and (f)(4).

3. A judgment lien for spousal or child support in favor of the County of Sacramento recorded July 1, 2004. This support lien was recorded post-

petition without bankruptcy court permission. The trustee alleges that the recordation is void as a violation of the automatic stay. The trustee also asserts that he can sell free and clear of the lien because the sale price exceeds the total of all liens on the property and because the lienholder could be compelled under state law to accept a money satisfaction of the judgment. The court finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(3), (f)(4) and (f)(5). The court also finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(2). A "lack of objection (provided of course there is notice) counts as consent." Futuresource, LLC v. Reuters Limited, 312 F.3d 281, 285 (7th Cir. 2002).

Pursuant to 11 U.S.C. § 363, the chapter 7 trustee is authorized to sell the Property to Marcos Reyes or an overbidder approved at the hearing free and clear of the liens and interests specified above, said liens and interests to attach to the proceeds of the sale. The proceeds of sale shall be administered as set forth in the motion. Payment of the broker's commission is approved.

The qualification and overbid procedures set forth in the motion are approved. Any initial overbid shall be in the amount of \$165,000 (\$2,500 over initial offer). Subsequent overbids shall be in minimum increments of \$2,000.

No request for a finding of good faith under 11 U.S.C. §363(m) is made and the court makes no such finding.

Counsel for the trustee shall prepare an order consistent with the foregoing ruling.

21. 03-93219-A-7 WILLIAM & WENDY STOERMER AV #2	HEARING ON MOTION FOR LIMITED RELIEF FROM DEBTORS' DISCHARGE INJUNCTION FILED BY MARILYN C. STEINAU, TRUSTEE OF MARILYN C. STEINAU 1986 TRUST 8/2/04 [78]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted to the extent set forth herein. The discharge injunction is modified to permit movant to name debtor William Stoermer as a defendant solely for the purpose of proceeding against insurance coverage he had in place at the time the underlying dispute arose. Relief is not granted to collect from debtors personally any judgment which may issue from the state court.

Counsel for movant shall submit an order that conforms to the court's ruling.

22. 04-92120-A-7 KELLY & TINA GRABENSTEIN HEARING ON MOTION TO
GMG #1 AVOID A STUDENT LOAN DUE
TO UNDUE HARDSHIP
8/18/04 [7]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied. The relief sought by debtor is not available by motion. Pursuant to Federal Rule of Bankruptcy Procedure 7001(6), a request to determine the dischargeability of a debt must be made by an adversary proceeding. Debtors' motion seeks a determination that their student loans are dischargeable under 11 U.S.C. § 523(a)(8).

The court will issue a minute order

23. 03-94321-A-7 MODESTO ROOFING, SIDING & HEARING ON MOTION TO
MDM #2 WINDOWS, INC. ABANDON PERSONAL PROPERTY
8/18/04 [155]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

Pursuant to 11 U.S.C. § 554(a), the motion is granted, and the trustee is hereby authorized to abandon adversary proceeding 03-9186-A to the debtor. The trustee has shown that the asset is burdensome or of inconsequential benefit to the estate.

The trustee shall submit an order that conforms to the court's ruling.

24. 03-91524-A-7 TAMMY LYNN MONTGOMERY HEARING ON MOTION FOR
SSA #3 SALE OF REAL PROPERTY
8/11/04 [46]

Tentative Ruling: The failure of any party in interest to file written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, because other parties may be interested in purchasing the property, the court will issue a tentative ruling.

The estate owns two parcels of vacant real property in Groveland California [APN 066-460-28 and 066-340-8] ("the Property"). The chapter 7 trustee seeks to sell the Property to Rose Chiu and John Wagoner for \$78,000.00 cash. Pursuant to 11 U.S.C. §363(b)(1), the motion is granted and the trustee is authorized to sell the Property to Rose Chiu and John Wagoner, or an overbidder approved by the court at the hearing. The proceeds of sale shall be administered as set forth in the motion.

The request to pay the brokers' commission is granted and the overbid

procedures are approved. Any initial overbid shall be in the amount of \$80,000. Subsequent overbids shall be in minimum \$1,000 increments.

No admissible evidence has been presented as to the good faith of Rose Chiu and John Wagoner or anyone else. The trustee has no personal knowledge of the purchaser's relationships, agreements and activities. The court will make no finding under 11 U.S.C. §363(m) as to the good faith of any purchaser in the absence of competent evidence by declaration or otherwise that addresses, at a minimum, the following: (1) the purchaser's relationships, if any, with the debtor, the trustee and any other actual or potential bidders; (2) the purchaser's agreements or understandings, if any, with the debtor, the trustee and any other actual or potential bidders regarding participation in the sale or the manner of participation in the sale; and (3) the purchaser's knowledge, if any, of any improper intended use of the proceeds of sale [In re EDC Holding Co., 676 F.2d 945 (7th Cir. 1982)].

Counsel for the trustee shall submit an order that conforms to the court's ruling.

25.	01-93125-A-7 DAN HIGASHI PRODUCE, INC. SF #5	HEARING ON MOTION TO COMPROMISE CONTROVERSY RE AVOIDANCE ACTION AND DETERMINATION OF SECURED CLAIM 8/17/04
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Disposition Without Oral Argument: The court notes that the documents filed by the trustee are defective in that the support documents for the trustee's motion are filed but not the motion itself. However, since the court finds that the documents which were actually filed sufficiently describe the proposed compromise, the court waives the defect. Counsel should not count on the court scouring his pleadings for sufficiency in the future.

The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The court has great latitude in approving compromise agreements. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the

compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. *Id.*

The compromise in question arises from litigation between the trustee and General Produce Co., LTD in adversary proceeding 03-9148. The estate is currently in possession of funds from the liquidation of assets totaling \$15,042.83. Defendant General Produce filed a \$20,252.77 secured claim in this case. The security interest in debtor's assets arises under the Perishable Agricultural Commodities Act (7 U.S.C. § 499e) and apparently attaches to all of the funds in the estate. The parties propose to compromise the matter by allowing the estate to surcharge the collateral in the amount of \$6,500 to partially cover administrative expenses in this bankruptcy. General unsecured creditors will receive nothing as the estate is administratively insolvent. Defendant's secured claim will be allowed in full and it will receive the balance of the proceeds held by the trustee. The parties will execute mutual releases.

On the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the trustee shall submit an order in the main case that conforms to the court's ruling. Counsel shall submit a separate order to resolve the still pending adversary proceeding.

26.	03-94132-A-7 WINBON VAUGHAN 04-9005 A. SIMMONS & GWEN TOSCHI VS.	CONT. HEARING ON APPLICATION FOR DEFAULT JUDGMENT 6/23/04 [17]
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Disposition Without Oral Argument: This matter continued from July 27, 2004 for movant to correct the procedural defects in the application. Instead, movant filed a whole new application that is on calendar at matter 27. Therefore, this application (ECF-17) is denied as moot.

The court will issue a minute order.

27.	03-94132-A-7 WINBON L. VAUGHAN 04-9005 HEH #1	HEARING ON APPLICATION FOR DEFAULT JUDGMENT 8/4/04 [25]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The plaintiff's application for a default judgment is granted. The pleadings along with the evidence submitted in support of the application show that plaintiff is entitled to a judgment of non-dischargeability pursuant to 11 U.S.C. § 523(a)(6). Plaintiff shall receive judgment in the amount of \$90,000 less the net amount of payments already received.

Any dividend received in this case shall be credited as a collection on the judgment.

Counsel for plaintiff shall submit an order that conforms to the court's ruling. Counsel shall also submit a separate judgment as required by Fed. R. Bankr. P. 9021. It shall state only that it is ordered, adjudged and decreed that (1) the debt owing to plaintiff is non-dischargeable pursuant to 11 U.S.C. § 523(a)(6); (2) the plaintiff is entitled to judgment in the amount of \$90,000; and (3) all prior amounts received less the amounts paid to the trustee under the preference compromise, plus any dividend received in this chapter 7 case shall be credited against the judgment. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9th Cir. BAP 1986).

28.	03-94533-A-7	PAUL L. GOZA & MGO #2	KAREN A. MARK	HEARING ON TRUSTEE'S MOTION FOR AUTHORITY TO SETTLE A CONTROVERSY WITH THREETS 8/12/04 [34]
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Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). However, in this instance the court issues a tentative ruling.

The court has great latitude in approving compromise agreements. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. *Id.*

The compromise in question arises from a dispute between the estate and Willie Threet, Jr. and Stephanie Threet. The trustee alleges that the Threets received a \$20,920 preferential transfer from debtors approximately four months pre-petition. The trustee further alleges that Willie Threet, Jr. is debtor Paul Goza's brother. The Threets deny the payment was a preferential transfer and raise a variety of affirmative defenses. The parties propose to compromise the matter through the Threets paying the estate \$10,000 in exchange for a release for any future claims related to this dispute.

The trustee asserts that the compromise satisfies the A & C Properties

factors. The trustee's analysis is perfunctory at best.

Accordingly, the court finds that the trustee has failed to carry his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is denied.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

29.	03-94533-A-7	PAUL L. GOZA & MGO #3 KAREN A. MARK	HEARING ON TRUSTEE'S MOTION FOR AUTHORITY TO SETTLE A CONTROVERSY WITH SOL MARK 8/12/04 [41]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The court has great latitude in approving compromise agreements. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. *Id.*

The compromise in question arises from a dispute between the estate and Sol Mark. The trustee alleges that Mr. Mark received a \$3,500 preferential transfer from debtors approximately four months pre-petition. The trustee further alleges that Mr. Mark is debtor Karen Mark's father. Mr. Mark denies the payment was a preferential transfer and raise a variety of affirmative defenses including that the payment was in the ordinary course of business; i.e. debtors were repaying a loan according to the terms of the note. The parties propose to compromise the matter through Mr. Mark paying the estate \$2,500 in exchange for a release for any future claims related to this dispute.

The trustee asserts that the compromise satisfies the A & C Properties factors. The trustee's analysis is perfunctory at best. However, the court in its own analysis agrees that, on the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

30. 00-92835-A-11 RODNEY M. CATALANO HEARING ON MOTION TO
LAJ #42 SELL REAL PROPERTY (LOT 3)
FREE AND CLEAR OF LIENS
WITH WAIVER OF STAY OF
RULE 6004(G)
8/23/04 [462]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

31. 04-92235-A-7 LENA BETTENCOURT HEARING ON OBJECTION
SF #1 OF CHAPTER 7 TRUSTEE TO
DEBTOR'S EXEMPTION CLAIM
IN REAL PROPERTY AND IN
VEHICLE
8/3/04 [11]

Tentative Ruling: This matter is continued to October 12, 2004 at 9:30 a.m. The trustee has failed to serve all proper parties with the motion. Pursuant to Fed. R. Bankr. P. 4003(b), the "person filing the list [of exemptions]" is entitled to service of the objection. In this instance, the debtor is the person who filed the Schedule of exemptions. She does not appear on the trustee's proof of service.

So as to provide the debtor with sufficient notice under LBR 9014-1(f)(1), the trustee shall serve debtors with copies of the objection and supporting documents on or before September 14, 2004, the date of this hearing. By the same date, trustee shall provide all parties in interest with notice of the continued hearing. If trustee fails to do either of these things, the objection will be overruled for improper service.

The court will issue a minute order.

32. 02-94751-A-11 SAFWAT MAHER ABSOOD, MD & CONT. HEARING ON OBJECTION
SSA #20 SHEILA ANN ABSOOD TO ALLOWANCE OF CLAIM NO. 11
OF 500 COFFEE ROAD OFFICE
CONDOMINIUM OWNERS
ASSOCIATION
1/13/04 [246]

Tentative Ruling: This matter was filed on January 13, 2004, and has been continued numerous times. The objection to claim No. 11 on ECF, filed by 500 Coffee Road Office Condominium Owner's Association, ("Claim") is sustained.

The debtors in possession question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. First, the Claim shows on its face that it was not due and owing on the date of the filing of the case (December 23, 2002). 11 U.S.C. § 502(b). Second, the Claim includes inadequate substantiation of the claim amount. Accordingly, the objection is sustained and the Claim is disallowed.

Counsel for the debtors in possession shall submit an order that conforms to the court's ruling.

33.	02-94751-A-11	SAFWAT MAHER ABSOOD, MD & SSA #21	SHEILA ANN ABSOOD	CONT. HEARING ON OBJECTION TO ALLOWANCE OF CLAIM NO. 12 OF 500 COFFEE ROAD PARTNERSHIP 1/13/04 [249]
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Tentative Ruling: This matter involves disputed facts that cannot be resolved on declarations. Pursuant to Bankruptcy Rule 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number SSA-21 shall no longer be used in reference to this matter. On or before September 30, 2004, the debtors, as plaintiff, shall pay the adversary proceeding filing fee and file and serve a summons and an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules. Defendant shall be the 500 Coffee Road Partnership. The adversary proceeding will next appear on the status conference calendar date set in the summons.

The court will issue a minute order.

34.	02-94751-A-11	SAFWAT MAHER ABSOOD, MD & SSA #22	SHEILA ANN ABSOOD	CONT. HEARING ON OBJECTION TO ALLOWANCE OF CLAIM NO. 13 OF PETER C. NIELSEN 1/13/04 [252]
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Tentative Ruling: This matter involves disputed facts that cannot be resolved on declarations. Pursuant to Bankruptcy Rule 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number SSA-22 shall no longer be used in reference to this matter. On or before September 30, 2004, the debtors, as plaintiff, shall pay the adversary proceeding filing fee and file and serve a summons and an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules. Defendant shall be the Peter Nielson. The adversary proceeding will next appear on the status conference calendar date set in the summons.

The court will issue a minute order.

35. 02-94751-A-11 SAFWAT MAHER ABSOOD, MD & CONT. HEARING ON OBJECTION
SSA #23 SHEILA ANN ABSOOD TO ALLOWANCE OF CLAIM NO. 15
OF WEBB MANAGEMENT C/O
CORPORATE PENSION PLAN
1/13/04 [255]

Tentative Ruling: This matter was filed on January 13, 2004, and has been continued numerous times. The objection to claim No. 15 on the Court's Claims Register, filed by Webb Management, ("Claim") is sustained.

The debtors in possession question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is allowed as a secured claim in the amount of \$567,653 - which is less than the \$600,000.00 amount conceded by debtors in possession in this objection to claim and stated as the correct claim amount in the creditor's July 30, 2004 opposition.

Counsel for the debtors in possession shall submit an order that conforms to the court's ruling.

36. 01-91256-A-7 EUGENE L. CONTI, SR. HEARING ON MOTION OF
HM #2 JOSEPHINE M. CONTI, L.P.
AND CONTI MATERIALS SERVICE,
INC. FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM
8/9/04 [122]

Tentative Ruling: The motion is partially granted. The motion is continued to October 12, 2004, at 9:30 a.m., as set forth below.

The court initially notes that the movant failed to file a separate motion and Notice of Hearing in violation of LBR 9014-1(d)(2). The movant further failed to file a Notice of Hearing which provides the required information regarding opposition in violation of LBR 9014-1(d)(3). Non-compliance in the future will likely result in denials without prejudice to refiling. Compliance with the Local Bankruptcy Rules is essential to maintaining proper electronic case dockets.

The movants are not entitled to costs or commissions incurred from the date of the bankruptcy filing through the date of the real estate foreclosure sale, December 27, 2001. During this time, the movants were pursuing their rights as secured creditors and any benefit to the estate was merely incidental.

The movants are entitled to costs and commissions from the date of the real estate foreclosure sale (again, December 27, 2001) through the date of the trustee's demand for turn-over, September 30, 2002. Storage costs are appropriate, since the movants were storing property of the estate. Sale commissions to the movant are appropriate, because the trustee would

have incurred sale costs if he had liquidated the property.

The movants are not entitled to either costs or sale commissions incurred after the trustee made his demand for turn-over.

To clarify the amount of costs and sale commissions appropriate under this ruling, the movants shall file and serve, on or before September 28, 2004, a supplemental costs and commissions statement which sets forth the storage costs and sale commissions incurred just from December 27, 2001 through September 30, 2002, for each piece of equipment. The trustee may file and serve a response to the supplement on or before October 5, 2004.

The court will issue a minute order.

37.	01-92463-A-7	PAUL W. GOSE, JR. & KARRI S. GOSE	HEARING ON TRUSTEE'S APPLICATION FOR APPROVAL OF COMPROMISE 8/13/04 [120]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from the trustee's objection to the debtors' claim of exemption in Debtor Karri Gose's personal injury claim. The personal injury action was previously compromised in this court, and the trustee currently holds \$70,750.73 of the remaining settlement funds. After the BAP published a decision in this matter and the parties engaged in some discovery, the trustee and the debtors negotiated a settlement, whereby the estate and the debtors will each take one-half of the remaining \$70,750.73 the settlement proceeds from the personal injury action, or \$35,285.36 each.

On the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

38.	04-92365-A-7 PAUL & JEAN LEDESMA RAZ #5	HEARING ON DEBTORS' MOTION FOR REDEMPTION UNDER 11 U.S.C. 722 8/26/04 [18]
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Disposition Without Oral Argument: Oral argument would not benefit the court in ruling on this matter.

The motion is denied without prejudice for filing defects. The movant failed to file a separate motion and Notice of Hearing in violation of LBR 9014-1(d)(2). The movant further failed to file a Notice of Hearing which provides the required information regarding opposition in violation of LBR 9014-1(d)(3). The movant cited to Local Rule 9013-1(a)(7), and there is no such rule in the Eastern District of California.

The court will issue a minute order.

39.	03-91167-A-7 BRANDON EASTON SSA #3	HEARING ON APPLICATION OF TRUSTEE FOR PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES TO SPECIAL COUNSEL 5/11/04 [18]
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Disposition Without Oral Argument: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1)(ii). Therefore, the matter is resolved without oral argument.

The application is approved for a total of \$8,551.46 in interim fees and costs. On March 21, 2003, the debtor filed a chapter 7 petition. This court authorized the employment of special counsel, effective July 14, 2003, pursuant to a contingent fee agreement. The special counsel now seeks interim compensation from a \$25,000 partial settlement, of \$8,333.33 as contingent fees and \$218.13 as costs.

As set forth in the application, these fees and costs are reasonable compensation for actual, necessary and beneficial services.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

40. 04-91769-A-7 DAVE ARMOUR
FW #3

HEARING ON MOTION TO
ABANDON REAL PROPERTY
8/13/04 [36]

Disposition Without Oral Argument: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1)(ii). Therefore, the matter is resolved without oral argument.

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the trustee is ordered to abandon the estate's interest in real property located at 733 B Street in Tracy, California. The debtor has shown that this asset is burdensome and of inconsequential benefit to the estate.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

41. 04-92771-A-7 KIRK & CHRISTINA PEARCE
RTW #7

HEARING ON MOTION
FOR REDEMPTION (CHRYSLER
FINANCIAL) UNDER 11 U.S.C.
722
8/16/04 [9]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 7, 2004 and is removed from the calendar.

42. 04-92771-A-7 KIRK & CHRISTINA PEARCE
RTW #8

HEARING ON MOTION
FOR REDEMPTION (WFS
FINANCIAL) UNDER 11 U.S.C.
722
8/16/04 [14]

Disposition Without Oral Argument: Oral argument would not benefit the court in ruling on this matter.

The motion is denied without prejudice for filing defects. The movant failed to file a separate motion and Notice of Hearing in violation of LBR 9014-1(d)(2). The movant further failed to file a Notice of Hearing which provides the required information regarding opposition in violation of LBR 9014-1(d)(3). The movant cited to Local Rule 9013-1(a)(7), and there is no such rule in the Eastern District of California.

The court will issue a minute order.

43. 04-92772-A-7 ERIKA NAGY
SF #3

HEARING ON APPLICATION
OF CHAPTER 7 TRUSTEE FOR
APPOINTMENT OF REAL ESTATE
BROKER
8/10/04 [15]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The application is approved pursuant to 11 U.S.C. § 327(a) and the trustee is authorized to employ Sheri Midgley of Sheri Midgley Realty as a real estate broker to provide valuation, marketing and/or sale services to the trustee. As set forth in the motion, compensation will be either by hourly fees approved through an application for compensation under 11 U.S.C. § 330, or as part of a court-approved sale.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

44. 03-92373-A-7 BLUE MAGIC PRODUCTS, INC.
MHK #8

CONT. HEARING ON TRUSTEE'S
VERIFIED MOTION FOR
APPROVAL OF COMPROMISE OF
ACTION AGAINST CARLA
WILLIAMS AND SLEEP 2000
7/6/04 [230]

Tentative Ruling: This matter was continued from August 13, 2004, to allow further briefing on the language of Paragraph 4(b) of the Settlement Agreement. On August 31, 2004, the trustee filed a stipulation between him and the defendants regarding a change in that contract term to be treated as an addendum to the Settlement Agreement.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from pre-petition state court

litigation filed by the debtor against defendants Carla Williams and Sleep 2000. Williams was a former employee of the debtor, and Sleep 2000 was the company she formed. The lawsuit mainly pertains to the allegations that Williams, through her company, improperly competed with the debtor's business relationships. The debtor and the defendants are in the business of supplying bedding and bedding accessories (like waterbeds). The debtor's complaint did not specify an amount of damages, and the trustee has been unable to precisely determine one. The trustee details his efforts to calculate damages, and adds that his failure to compute them has hindered his ability to retain an attorney on a contingent basis to pursue the action. The parties have agreed that to compromise this action, the defendants will pay \$12,500 to the estate in exchange for a dismissal of the state court litigation, with mutual releases.

On the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion, including the Addendum to the Settlement Agreement, is granted.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

45.	02-91174-A-7 MAJISTEE CORPORATION JTN #2	HEARING ON MOTION FOR APPROVAL OF COMPROMISE AND SALE OF ASSETS 8/11/04 [299]
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Tentative Ruling: The motion to compromise the estate's interest in litigation through the sale of real and personal property, subject to overbidding, is granted, as set forth below.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from litigation in Kansas ("Kansas Litigation") regarding, *inter alia*, the debtor's allegations that JJ&J Incorporated, formerly known as R.B.R. Golf Management, Inc. ("JJ&J")

trespassed onto the debtor's land ("Kansas Realty") and removed about 75 trees, causing \$40,000 in damages. There is another party to the Kansas Litigation, which is not relevant to the issues before this court. JJ&J answered the complaint and denied liability. JJ&J filed a motion to dismiss to which the debtor and the other party responded. The court in the Kansas Litigation has not ruled yet. The trustee wants to settle the estate's interest in the Kansas Litigation, given the expense of litigation and the uncertainty of success.

To compromise this controversy, the trustee and JJ&J have agreed that JJ&J will pay: (1) \$2,500 to the estate for the estate's interest in the Kansas Realty, on an "as is" basis; and (2) \$2,500 to the estate for the trustee to "compromise, settle, and assign all McGranahan's rights in the Kansas Litigation with and to JJ&J." The separate sale of each asset is subject to overbids in increments of \$500.00 in open court. Overbids must be paid in cash within a time set by trustee at the hearing.

On the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion to approve the compromise is granted, with the clarification that the compromise calls for the sale of the estate's rights in the Kansas litigation to JJ&J, or a court approved overbidder, rather than a dismissal of the estate's claims in the Kansas Litigation. At the hearing, the court will hold separate bidding for potential overbidders for the estate's interest in the Kansas Realty and the Kansas Litigation. As set forth in the motion, all overbids must be in \$500 increments. Bids and overbids must be paid in cash, or by cashier's check issued by a bank acceptable to the trustee, within a time set by trustee at the hearing.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

46. 04-90977-A-7 JAMES KIETZKE
SF #6

HEARING ON OBJECTION
TO EXEMPTION CLAIMS IN
RESIDENCE AND EARNINGS
PENDING ESCROW AND DEMAND
FOR TURNOVER OF ESCROW
EARNINGS FILED BY GARY R.
FARRAR
8/13/04 [42]

Tentative Ruling: The trustee's two objections are overruled as moot, for the reasons set forth below.

The trustee's objection to the debtor's exemption in his residence is overruled as moot, because the debtor amended his exemption to the \$50,000 level. The trustee's objection in the debtor's exemption of \$13,311.75 of "earnings pending in escrow" ("Escrow Money") is also overruled as moot, since the debtor amended his exemption.

The court notes that the debtor's most current claim of exemption in the Escrow Money is based on Cal. C.C.P. § 706.050 and 15 U.S.C. § 1673. (ECF-48).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

47.	04-92879-A-11 WATERFRONT WAREHOUSE, INC. CBM #1 GLENN MOFFATT, JACK FRESCHI, DOUGLAS EGBERT & DEBRA EGBERT VS.	HEARING ON MOTION TO CONFIRM STATE COURT RECEIVER 8/2/04 [13] 8/17/04 [39]
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Disposition Without Oral Argument: Oral argument would not benefit the court in ruling on this matter.

The motion is denied, without prejudice, for filing defects. On August 17, 2004, the movant filed, an "Amended Motion," which improperly combined the motion and an "Amended Notice of" motion in one document (ECF-39). LBR 9014-1(d)(2). (The movant also filed another separate Notice of Hearing at ECF-41, which added further confusion). The movant also improperly included multiple motions in a single document with one docket control number, CBM-1. LBR 9014-1(c) (1) and (4). A Relief from Stay Information Sheet should only be filed in distinct motion for relief from the automatic stay. LBR 4001-1(c).

On August 26, 2004, the movant also improperly filed three separate Notices of Hearing for D.C. No. CBM-1, causing the document identified as CBM-1 to be calendared three times (on two different calendars) under the same Docket Control Number. Only one Notice of Hearing should be filed for each separate motion. LBR 9014-1(d)(2). These Notices of Hearing did not clearly state they amended anything, but it appears that the movant wanted to have its motions now treated as filed under LBR 9014-1(f)(2). This was a significant change, since both the August 17, 2004 notices required written opposition. One of the August 26, 2004 Notices of Hearing (ECF-60) did not include the requirements for opposition at all in violation of LBR 9014-1(d)(3).

In short, movant's violations of the LBR have created confusion and an administrative nightmare. If movant re-files the motions, it should file separate motion documents for its motion to confirm state court receiver, its motion to dismiss and its motion for relief from automatic stay, each set with its own Docket Control Number. Docket Control Number CBM-1 should not be used. The matters covered by that Docket Control Number are terminated, without prejudice, by the court's rulings of this date.

The court will issue a minute order.

48.	04-92879-A-11 WATERFRONT WAREHOUSE, INC. CBM #1 GLENN MOFFATT, JACK FRESCHI, DOUGLAS EGBERT & DEBRA EGVERT VS.	HEARING ON MOTION TO DISMISS CHAPTER 11 8/2/04 [13] 8/17/04 [39]
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Disposition Without Oral Argument: Oral argument would not benefit the court in ruling on this matter.

The motion is denied, without prejudice, for filing defects. On August 17, 2004, the movant filed, an "Amended Motion," which improperly

combined the motion and an "Amended Notice of" motion in one document (ECF-39). LBR 9014-1(d)(2). (The movant also filed another separate Notice of Hearing at ECF-41, which added further confusion). The movant also improperly included multiple motions in a single document with one docket control number, CBM-1. LBR 9014-1(c) (1) and (4). A Relief from Stay Information Sheet should only be filed in distinct motion for relief from the automatic stay. LBR 4001-1(c).

On August 26, 2004, the movant also improperly filed three separate Notices of Hearing for D.C. No. CBM-1, causing the document identified as CBM-1 to be calendared three times (on two different calendars) under the same Docket Control Number. Only one Notice of Hearing should be filed for each separate motion. LBR 9014-1(d)(2). These Notices of Hearing did not clearly state they amended anything, but it appears that the movant wanted to have its motions now treated as filed under LBR 9014-1(f)(2). This was a significant change, since both the August 17, 2004 notices required written opposition. One of the August 26, 2004 Notices of Hearing (ECF-60) did not include the requirements for opposition at all in violation of LBR 9014-1(d)(3).

In short, movant's violations of the LBR have created confusion and an administrative nightmare. If movant re-files the motions, it should file separate motion documents for its motion to confirm state court receiver, its motion to dismiss and its motion for relief from automatic stay, each set with its own Docket Control Number. Docket Control Number CBM-1 should not be used. The matters covered by that Docket Control Number are terminated, without prejudice, by the court's rulings of this date.

The court will issue a minute order.

49.	04-91183-A-7 CYNDIE WILSON SF #5	HEARING ON MOTION TO EXTEND DEADLINE TO OBJECT TO EXEMPTIONS 7/29/04 [30]
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Disposition Without Oral Argument: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1)(ii). Therefore, the matter is resolved without oral argument.

The motion is granted, pursuant to Bankruptcy Rule 4003(b), and the time for the trustee to file objections to the debtor's claims of exemptions is extended to and including September 15, 2004. The need for additional time to investigate the impact of the debtor's divorce decree and undisclosed and transferred assets constitutes cause for enlargement of time under Bankruptcy Rule 4003(b). The court makes no finding at this time as to compliance or lack of compliance with 11 U.S.C. § 521.

The foregoing ruling only extends the time as to the trustee. No cause has been shown regarding any other party in interest.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

50. 04-91784-A-7 ERIC PETERSON
MGO #3

HEARING ON TRUSTEE'S
MOTION OBJECTING TO
DEBTOR'S EXEMPTIONS
8/9/04 [17]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this instance, since the debtor is *pro se*, the court issues a tentative ruling.

The trustee's three objections to the debtor's claims of exemptions are sustained, as set forth below, without prejudice to the debtor's right to amend his Schedule C in the future.

The objection to the \$360,000 exemption in the residence is sustained as to any amount over \$75,000, because the claimed amount exceeds any residential exemption limit provided by the statute. The debtor is allowed a \$75,000 exemption, because his current schedules before the court show he is entitled to an exemption in that amount.

The objection to the \$24,000 exemption in the 2003 GMC truck is sustained, because that amount also exceeds the statutory limit and the debtor provided no evidence to support his "tools of the trade" exemption in this vehicle. The debtor has not submitted evidence that he is entitled to any exemption in this personal property.

The objection to the \$4,000 exemption under § 704.010 in the 1990 Ford Mustang is sustained as to any amount over \$1,900, because the claimed amount exceeds the statutory limit. The debtor is allowed a \$1,900 exemption, because his current schedules before the court show he is entitled to an exemption in that amount.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

51. 02-90985-A-11 SPECIALIZED CLUTCH & BRAKE
02-9014 OF STOCKTON, INC. BM-3
UNITED BRAKE SYSTEMS, INC.,
ET AL. VS.
SPECIALIZED CLUTCH AND BRAKE OF
STOCKTON INC., ET AL.

HEARING ON MOTION FOR
ATTORNEYS' FEES AND COSTS
FILED BY UNITED BRAKE
SYSTEMS, INC., MIDLAND
BRAKE, INC. AND CALIFORNIA
EQUIPMENT CORPORATION
8/17/04 [352]

Tentative Ruling: This matter is continued to October, 26, 2004, at 9:30 a.m.

In any application exceeding \$5,000, or when the professional anticipated or actual total fees in the case will exceed \$10,000, this court requires that time be broken down by projects or tasks, with hours and amounts assigned to each project or task. The time entries for each task should be sorted by date, not by attorney. Plaintiffs' attorney shall supplement its application and file and serve said supplement on or before September 28, 2004. The responding parties may file a supplemental response on or before October 12, 2004.

The court will issue a minute order.

52.	01-92886-A-11 MICHAEL HAT 03-9178 GSMD #1 SHARON DIAMANTE VS. MICHAEL HAT ET AL.	RE-SET HEARING ON MOTION TO MODIFY EXISTING SCHEDULING ORDER PURSUANT TO AGREEMENT AND RELATED MATTERS 6/29/04 [23] 8/13/04 [38]
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Tentative Ruling: None.

53.	04-91688-A-7 PATRICIA MARIE DIRKS MHK #5	HEARING ON TRUSTEE'S VERIFIED MOTION FOR AUTHORIZATION TO SELL ESTATE'S INTEREST IN RESIDENCE TO DEBTOR 8/3/04 [38]
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Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this instance, since the debtor is *pro se*, the court issues a tentative ruling.

The estate owns an interest in real property located at 16585 Cornucopia Mine Road in Soulsbyville, California ("the Property"). The chapter 7 trustee seeks to sell the estate's interest in the Property to the debtor for \$25,000 in cash. Pursuant to 11 U.S.C. § 363(b)(1), the motion is granted to the following extent: The trustee is authorized to sell the estate's interest in the Property to debtor on the terms set forth in the motion.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

54.	01-92889-A-7 GRAPECO, INC. 04-9113 AEW #1 MICHAEL MCGRANAHAN, TRUSTEE VS. TXU ENERGY RETAIL COMPANY, LP	HEARING ON DEFENDANT'S MOTION TO DISMISS UNDER FED.R.CIV.P.12(B)(6) FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED 8/11/04 [8]
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Disposition Without Oral Argument: This matter was continued by court-approved stipulation to September 28, 2004, at 9:30 a.m., and is removed from this calendar.

55. 01-92890-A-7 CAPELLO, INC.
CWS #11

HEARING ON MOTION FOR
APPROVAL OF A COMPROMISE
BETWEEN THE ESTATE AND
DIABLO VALLEY PACKAGING,
INC.
8/17/04 [774]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from litigation in Adversary No. 03-9136 between the trustee and Diablo Valley Packaging regarding the debtor's alleged preferential payment of \$11,895.09. Diablo Valley Packaging defends on the ordinary course of business theory. To compromise their dispute, the parties have agreed that in exchange for the trustee dismissing the adversary with prejudice, Diablo Valley Packaging will tender \$3,800 to the estate. Diablo Valley Packaging also agreed to waive any claim against the estate.

On the whole, the court finds that the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the trustee shall submit an order that conforms to the court's ruling. Counsel shall submit a separate order in the adversary proceeding disposing of it pursuant to the terms of the settlement.

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from litigation in Adversary No. 03-9116 between the trustee and Vintage 99 Label Mfg. Inc. regarding the debtor's alleged four preferential payments totaling \$38,151.44. Vintage 99 Label Mfg. Inc. defends, in its amended answer, on the ordinary course of business and "new value" theories. To compromise their dispute, the parties have agreed that in exchange for the trustee dismissing the adversary with prejudice, Vintage 99 Label Mfg. Inc. will tender \$6,000 to the estate. Vintage 99 Label Mfg. Inc. also agreed to waive any claim against the estate.

On the whole, the court finds that the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the trustee shall submit an order that conforms to the court's ruling. Counsel shall submit a separate order in the adversary proceeding disposing of it pursuant to the terms of the settlement.

57. 01-92890-A-7 CAPELLO, INC.
04-9029 JND #1
BANK OF THE WEST ET AL VS.

CAPELLO, INC., ET AL.

CONT. HEARING ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT SHARON
DIAMANTE
7/7/04 [69]

Tentative Ruling: None.

58. 01-92890-A-7 CAPELLO, INC.
04-9029 JND #2
BANK OF THE WEST ET AL VS.

CAPELLO, INC., ET AL.

CONT. HEARING ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT GARY
FARRAR, CHAPTER 7 TRUSTEE
OF CAPELLO, INC.
7/7/04 [78]

Tentative Ruling: None.

59. 03-95099-A-7 ROSENDO ANTONIO F. UMALI
MGO #3

HEARING ON MOTION FOR
AUTHORITY TO SETTLE A
CONTROVERSY WITH DEBTOR
AND LORNIMITA UMALI
8/26/04 [68]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

60. 01-92889-A-11 GRAPECO, INC.
PRG #2

HEARING ON MOTION FOR
APPROVAL OF STIPULATION
FOR ORDER ALLOWING THE
ADMINISTRATIVE CLAIM OF
MESSER GRIESHEIM INDUSTRIES,
INC.
8/27/04 [949]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

61. 04-93016-A-7 LAMONE WILLIAMS
SF #4

HEARING ON MOTION FOR
AUTHORIZATION TO SELL
EQUITY IN REALTY TO DEBTOR
(OST)
9/3/04 [18]

Tentative Ruling: This motion is on calendar pursuant to LBR 9014-

1(f)(3). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.